

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MICHAEL STROUD, JR.,

v.

UNITED STATES OF
AMERICA.

CRIMINAL FILE NO.
4:17-CR-010-01-HLM-WEJ

CIVIL FILE NO.
4:19-CV-0043-HLM-WEJ

ORDER

This case is before the Court on Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 ("§ 2255 Motion") [44] and on the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [45].

I. Standard of Review

28 U.S.C. § 636(b)(1) requires that in reviewing a magistrate judge's report and recommendation, the district court "shall make a de novo determination of those portions of the

report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). The Court therefore must conduct a de novo review if a party files “a proper, specific objection” to a factual finding contained in the report and recommendation. Macort v. Prem, Inc., 208 F. App’x 781, 784 (11th Cir. 2006); Jeffrey S. by Ernest S. v. State Bd. of Educ., 896 F.2d 507, 513 (11th Cir. 1990). If no party files a timely objection to a factual finding in the report and recommendation, the Court reviews that finding for clear error. Macort, 208 F. App’x at 784. Legal conclusions, of course, are subject to de novo review even if no party specifically objects. United States v. Keel, 164 F. App’x 958, 961 (11th Cir. 2006); United States v. Warren, 687 F.2d 347, 347 (11th Cir. 1982).

II. Discussion

On March 8, 2019, Judge Johnson issued his Final Report and Recommendation. (Final Report & Recommendation (Docket Entry No. 45).) Judge Johnson recommended that the

Court dismiss Petitioner's § 2255 Motion as impermissibly successive. (Id.)

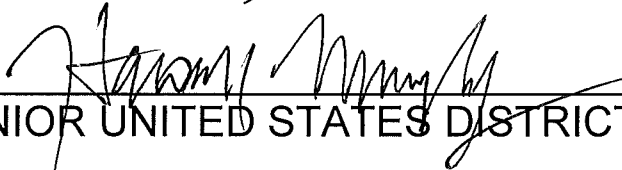
As of the date of this Order, the Clerk's docket indicates that Petitioner has not filed Objections to the Final Report and Recommendation. The time for filing Objections has expired, and the Court finds that the matter is ripe for resolution.

The Court finds that Judge Johnson accurately set forth the procedural history of this case, and it incorporates that portion of the Final Report and Recommendation into this Order as if set forth fully herein. (Final Report & Recommendation at 2-3.) Judge Johnson also correctly set forth the law relating to second or successive § 2255 Motions, and he properly concluded that the Court lacks jurisdiction to consider Petitioner's § 2255 Motion. (Id. at 3.) Further, for the reasons discussed in the Final Report and Recommendation, the Court declines to issue a certificate of appealability. (Id. at 4.)

III. Conclusion

ACCORDINGLY, the Court **ADOPTS** the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [45] and **DISMISSES** Petitioner's § 2255 Motion [44] as impermissibly successive. The Court **DIRECTS** the Clerk to **CLOSE** the civil case associated with that Motion: Civil Action File No. 4:19-CV-0043-HLM-WEJ. Finally, the Court **DECLINES** to issue a certificate of appealability.

IT IS SO ORDERED, this the 3rd day of April, 2019.



SENIOR UNITED STATES DISTRICT JUDGE